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REMARKS

Thorough examination of the application is sincerely appreciated.

Applicant wishes to thank the Examiner for the helpful suggestions regarding claims 1 and 8, and for indicating allowability of claims 8-15.

Claims 1 and 8 were objected due to some informal errors, as noted in the Office Action. In response, claims 1 and 8 are amended to correct those errors, and withdrawal of the objection is respectfully requested.

Claims 1-7 and 16-20 were rejected under 35 USC 102(b) as being anticipated by U.S. Patent 6,148,005 (Paul et al). In response, the rejections are traversed for the following reason.

The examiner alleges that “an adaptive node having a second network analyzer that accounts for the number of the channels subscribed by the receiver”, as recited in Applicants’ claim 1, is disclosed in Paul’s Figure 1 as a node in the network 150. It is respectfully submitted that it is not clear which node the examiner refers to. No reference number is provided in the Office Action to refer to the “node”, and it is respectfully requested that the examiner specifically indicate the reference number in the figure and portions of the text for the alleged node.

The examiner further alleges that Applicants’ above limitation can be found in Paul as the designated receiver DR 178. Paul’s DR 178, however, does not include a second network analyzer, as claimed in Applicants’ claim 1. Applicants’ representative was unable to find such a description and requests the examiner to specifically point out those portions in the Paul patent allegedly disclosing the recited feature of Applicants’ invention.

Still further, the examiner states that Applicants’ above limitation is taught in the Paul’s abstract, specifically at lines 12 and 13: “a device for monitoring congestive state of the network ...” It is respectfully submitted that in the previous sentence of the Office Action the examiner

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referred to the very same portion of the Paul's patent as allegedly anticipating Applicants' first network analyzer. Assuming for the sake of argument only that Paul's device for monitoring congestive state of the network, as described at lines 12 and 13 of the abstract in Paul, does correspond to Applicants' first network analyzer of claim 1. Then, it is unclear as to how a single device in Paul – this device not even included in a receiver – can correspond to the two different elements: first network analyzer and second network analyzer recited in Applicants' claim 1. The disclosure in Paul simply does not support such an interpretation, and the examiner's analysis is factually wrong. If the examiner disagrees, he is respectfully requested to elaborate on this point in more detail. More specifically, the examiner maintains the rejection, he is requested to indicate how Paul's device can accomplish the structure and functionality of Applicants' first and second network analyzers with reference to specific portions and/or figures of the patent.

Pursuant to MPEP, Section 2131, to anticipate a claim, the reference must teach every element of the claim. As discussed above, Paul is woefully deficient in teaching each and every element of Applicants' claim 1. It is, therefore, respectfully submitted that independent claim 1 is not anticipated by Paul. Withdrawal of the rejection is respectfully requested.

Independent claims 7 and 16 contain, among other things, the features of claim 1 as discussed above. Applicants essentially repeat the same argument as above with reference to claim 1 and assert that claims 7 and 16 are also allowable for the same reasons as claim 1.

Claims 2-6 and 17-20 depend, either directly or indirectly, from the independent claims and thus incorporate novel and non-obvious features thereof, in addition to further limitations. Therefore, dependent claims 2-6 and 17-20 are patentably distinguishable over the prior art for at least the same reasons as independent claims. Withdrawal of the rejections is respectfully requested.


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In view of the above, it is respectfully submitted that Paul does not anticipate or render obvious the present invention because the prior art reference fails to teach or suggest all of the features of the present invention, as discussed hereinabove.

An earnest effort has been made to be fully responsive to the Examiner's correspondence and advance the prosecution of this case. In view of the above amendments and remarks, it is believed that the present application is in condition for allowance, and an early notice thereof is earnestly solicited. However, if for any reason this application is not considered to be in condition for allowance, the Examiner is respectfully requested to call the undersigned attorney at the number listed below prior to issuing a further Action.

Please charge any additional fees associated with this application to Deposit Account No. 14-1270.

Respectfully submitted,

By 
Larry Liberchuk, Reg. No. 40,352
Senior IP Counsel
Philips Electronics N.A. Corporation
914-333-9602